

PAUL LANDIS

IBLA 77-365

Decided October 31, 1977

Appeal from decision of the Nevada State Office of the Bureau of Land Management rejecting an offer to lease for failure to submit additional rental prior to the issuance of noncompetitive oil and gas lease.

Set aside and remanded.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Noncompetitive Leases--Oil and Gas Leases: Rentals--Regulations: Applicability

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn with first priority prior to the effective date of the increase.

2. Administrative Procedure: Administrative Review--Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Rentals

Where the Bureau of Land Management issued a decision notifying a successful lease offeror of the increased advanced rental rate from \$.50 to \$1 per acre as per the regulation change in 43 CFR 3103.3-2, effective February 1, 1977, and no right of appeal was granted from that decision, the offeror was not bound to appeal from that decision in order to preserve his priority status. When the offeror took

an appeal from a subsequent decision rejecting the offer, that appeal suspended the effect of both BLM decisions pending the result of the appeal before this Board and upon our affirmation, appellant now will be given 15 days to comply with the original requirements before his offer is rejected.

APPEARANCES: Paul Landis, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Paul Landis has appealed from a decision of the Nevada State Office, Bureau of Land Management, dated April 14, 1977, which rejected his simultaneously filed offer to lease (N-16165).

The record shows that appellant was the successful drawee in the December simultaneous oil and gas lease offering for parcel No. 159 for 2,560 acres. On January 13, 1977, in response to a Nevada State Office request, he paid rental at 50 cents per acre and signed a stipulation. By decision of February 14, 1977, the State Office requested additional advance rental and a special stipulation to be signed and returned within 30 days of receipt of the notice. That decision properly cited a change in the regulation 43 CFR 3103.3-2, increasing the rental from 50 cents to \$1 per acre on all noncompetitive leases issued on or after February 1, 1977. When appellant failed to respond to the State Office request the lease offer was rejected by decision of April 14, 1977.

Appellant states in his appeal that he never received a bill for the additional rent and that the State Office notice is not proper grounds for withholding the lease.

[1] The issue of the increased rental rate has been fully considered by this Board in the recent cases of Milton J. Lebsack, 29 IBLA 316 (1977); and Raymond N. Joeckel, 29 IBLA 170 (1977). These two decisions held that the increased rental must be paid on a lease issued on or after February 1, 1977. For the same reasons stated therein, the appellant in this case has properly been required to pay the annual rental of \$1 per acre. If appellant wishes to secure the lease in question he must pay the assessment of the additional rental.

[2] The State Office decision of February 14, 1977, gave sufficient notice of the additional money required for the advanced rental and adequately explained the change in the rental rate. A

copy of the governing regulations was enclosed for appellant's information. However, no right of appeal was granted from that decision. Therefore, the decision was in the nature of an interlocutory determination and appellant was not bound to appeal from that decision in order to preserve his priority status.

In a recent case before this Board, D. R. Gaither, 32 IBLA 106 (1977), we examined the Bureau's procedures for the handling of the notification of the increased rental rate for all pending lease offers. In that case where an appellant complained that he was not properly informed of his appeal rights with the initial notice, no harm was done by the omission because the offeror took a timely appeal before the offer was rejected for nonpayment of the rental. However, in this case appellant's offer has been rejected before he has had an opportunity to air his objections to the new procedure. We note that in Gaither, the Board did not hold that the appellants' offers were rejected but only affirmed the decision requiring them to pay the additional rental. Presumably, they were able to make payment after our decision issued even though by then, more than 6 months had elapsed since the State Office had demanded the additional rental. If allowed to stand, the decision in this case would foreclose issuance of the lease even if appellant now chooses to pay the increased rental. Therefore, we hold that when appellant took his timely appeal from the decision of April 14, 1977, that appeal suspended the effect of both decisions pending the final determination of the merits of his appeal by this Board. 43 CFR 4.21. 1/ Upon receipt of our decision in the matter, appellant has 15 days to comply with the original State Office requirements to pay the additional rental and submit the special stipulation. If these requirements are not met within that period, the drawee will be automatically disqualified.

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1/ This regulation provides:

"(a) Effect of decision pending appeal. Except as otherwise provided by law or other pertinent regulation, a decision will not be effective during the time in which a person adversely affected may file a notice of appeal, and the timely filing of a notice of appeal will suspend the effect of the decision appealed from pending the decision on appeal. However, when the public interest requires, the Director or an Appeals Board may provide that a decision or any part of it shall be in full force and effect immediately."

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and remanded for action consistent herewith.

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Martin Ritvo  
Administrative Judge

We concur:

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Frederick Fishman  
Administrative Judge

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Douglas E. Henriques  
Administrative Judge

